



The Commonwealth of Massachusetts

**DEPARTMENT OF
TELECOMMUNICATIONS AND ENERGY**

MEMORANDUM

TO: D.T.E. 03-60 Service List
(via email and regular mail)

FROM: Paula Foley, Assistant General Counsel

RE: Procedural Schedule; Request for Comments

DATE: March 4, 2004

On March 2, 2004, the United States District Court of Appeals for the District of Columbia Circuit ("D.C. Circuit Court") vacated and remanded portions of the Federal Communications Commission's ("FCC") Triennial Review Order, specifically finding that the delegation by the FCC of authority to state public utility commissions to make impairment determinations was unlawful. United States Telecom Association v. Federal Communications Comm'n, No 00-1012, at 18 (D.C. Cir. March 2, 2004) ("USTA II"). However, the D.C. Circuit Court stayed its vacatur until "no later than the later of (1) the denial of any petition for rehearing or rehearing en banc or (2) 60 days from today's date [*i.e.*, May 1, 2004]." USTA II at 62. On March 3, 2004, Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon") filed a motion with the Department requesting that, given the D.C. Circuit Court's decision in USTA II, the Department immediately stay Track A (Impairment Issues) of the D.T.E. 03-60 proceeding, but go forward with Track B (Hot Cut Issues).

The Department requests comments from the parties to this proceeding on Verizon's motion and the procedural approach going forward. Specifically, should the Department stay the entire proceeding, go forward with the entire proceeding, or go forward with portions of the proceeding? If the Department should go forward with any portions of the proceeding, what is the jurisdictional basis and appropriate procedural schedule to do so?

As the parties are aware, we currently have evidentiary hearings for both Track A and Track B scheduled to begin March 22, 2004. In order to receive comments on Verizon's motion and the above questions, the Department hereby temporarily stays the existing procedural schedule for three weeks. Comments on Verizon's motion and the Department's questions are due no later than 5:00 p.m. on Friday, March 12, 2004. Should the Department determine to continue with all or part of this proceeding, the Department will establish a new procedural schedule that will give sufficient advance notice before hearings are held.

If you have any questions, please contact Paula Foley at (617) 305-3608.